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AUG 4 1945
CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 299

RUTHBELL COAL COMPANY, A CORPORATION,
Petitioner,

vs.

CLARA W. STANTON, ADMINISTRATRIX OF THE ESTATE OF ERNEST L. STANTON, DECEASED,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA AND BRIEF IN SUPPORT THEREOF.

F. E. PARRACK,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA.

To the Honorable, the Supreme Court of the United States:

The petition of Ruthbell Coal Company, a Corporation, petitioner, respectfully shows unto this Honorable Court:

Petitioner seeks certiorari to the Supreme Court of Appeals of West Virginia to review a judgment of said Court entered May 29, 1945, affirming a judgment of $6,500.00, with interest and costs, rendered by the Circuit Court of Preston County, West Virginia, rendered April 24, 1944, against petitioner, and in favor of respondent. A certified copy of the printed record in said Supreme Court of Appeals, and of its opinion in the case are filed with this petition, and pages referred to are to that record.

Summary Statement of Matters Involved

I

Petitioner, a coal mining corporation, owned and operated on May 1, 1943, a bituminous coal mine in Preston County, West Virginia.

II

On May 1, 1943, the President of the United States of America issued an Executive Order authorizing and directing the Secretary of the Interior, who was Solid Fuels Administrator of the United States, to take possession of all coal mines where strikes or stoppage of work had occurred or were threatened (R. 140-142).

The direction was, so far as necessary to take over all "real and personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation," and to operate or "arrange for the operation of such mines * * * and do all things necessary for or incidental to the production, sale and distribution of coal."

He was authorized to "act through or with the aid of such public or private instrumentalities or persons as he may designate," and "permit the management to continue its managerial functions to the maximum degree consistent with the aims of this order."

He was directed to make employment available to persons seeking employment, so far as they were needed, and the Secretary of War, upon request of the Secretary of the Interior, was directed to furnish protection to the mines, and to the persons employed.

It was made the duty of the Secretary of the Interior to maintain customary conditions, and to recognize the right of collective bargaining.

III

On May 1, 1943, by authority of such Executive Order, the Secretary of the Interior took possession of practically all, if not all mines producing bituminous coal, including petitioner's mine, said mines being listed in what was called "Appendix A."

That a general order, designated "Order No. 1809," was issued by the Secretary of the Interior on May 1, 1943, taking over all mines specified in "Appendix A," petitioner's mine being therein specified, by which was taken "any and all real and personal property, franchises, rights, facilities, funds and other assets, * * * for operation by the United States in furtherance with the prosecution of the War."

The president was made "Operating Manager for the United States," and authorized and directed, "under the supervision of the Secretary," to "operate such mine, and to do all things necessary and appropriate" for its operation and the distribution and sale of the product.

It provided, "All officers and employees of the Company are serving the Government of the United States," and directed them to perform their usual functions "with full regard for their obligations to the Government of the United States." It directed the "Operating Manager for the United States to fly the flag on the premises, and to post in a conspicuous place the notice of the taking over of the mine by the Secretary, and to furnish such notice to all those in possession of Company funds" (R. 151-152).

IV

On May 1, 1943, the Secretary of the Interior, acting as "Solid Fuels Administrator for War," sent to C. W. Craig, president of petitioner, a telegram announcing the taking over of said mine, and calling upon him as a "loyal,

patriotic American," to act as "Operating Manager for the United States, and to continue operations subject to instructions."

He was asked to solemnly promise to "serve the United States," and to fly the flag to show that "Property is being operated exclusively for the United States, and that all employees, including myself, who operate the mines are serving our country." He was to insert the name of the mines after the words "The mines operating for the United States is."

He was directed to, in operating, "use existing managerial set up as far as practicable."

If anything happened requiring military force to maintain order he was to communicate with a "Manager of Field Office of Bituminous Coal Division" for his area (142-144).

V

Pursuant to said Executive Order and said Order 1809 of the Secretary of the Interior, and said telegram and further orders of the Secretary of the Interior and Solid Fuels Administration issued from time to time, said C. W. Craig, as Operating Manager for the United States, continued operation of said mine until September 3, 1943.

There was required to be posted, and was posted in a prominent place on the premises of said Company, a picture of the United States flag, under which were the words "United States Property," and underneath those words the words "The Secretary of the Interior," followed by the words "Order for Taking Possession." Then followed a recital that under the authority of the President of the United States, having found that a strike or a stoppage had occurred, the Secretary of the Interior had taken possession of all the mines named in "Appendix A" (which included the mine of petitioner), of the real and personal

property, franchises, rights, facilities, funds and other assets for the United States in furtherance of the prosecution of War. That the president of the Company was designated Operating Manager for the United States, and directed, *subject to the supervision of said Secretary and in accordance with the regulations,* to operate the mine, and that all officers and employees of the Company were serving the Government of the United States, and should conduct themselves with full regard for their obligations to the Government of the United States (emphasis supplied) (R. 149-150).

That Ernest L. Stanton was, on August 25, 1943, by Peter Titchenell, mine foreman, employed to work, and while so employed was fatally injured on August 27, 1943, by a fall of the roof of the mine.

Respondent, as his administratrix, sued petitioner for causing the death of her decedent, alleging negligence and failure to comply with the Workmen's Compensation Law of West Virginia (R. 9-13).

A trial resulted in a verdict for the plaintiff in said suit by the jury for $6,500.00 (R. 37), and a judgment on said verdict on April 24, 1944, in the circuit court of said Preston County (R. 41-43).

Petitioner took exception to various rulings of the trial court, and having taken appropriate bills of exception, obtained from the Supreme Court of Appeals of West Virginia, on September 11, 1944, a writ of error (R. 8). That court, on May 29, 1945, made the order complained of, affirming the judgment of said circuit court (R. 202).

Petitioner, among other defenses relied upon, claimed that it was not on August 27, 1943, the employer of Ernest L. Stanton, and asserted that from May 1 to September 1943, the Government of the United States was the operator of the mine, and the employer of all persons engaged in mining coal therein. It made this defense by

several pleas (R. 14-18 and 24-32), to which pleas respondent demurred, and the Court sustained demurrer in a written opinion (R. 21-23).

Petitioner upon the trial attempted to prove as a defense the exclusive possession of said mine by the United States (R. 136-153), but the trial court held that the Government's possession and control of the mine was no defense, and rejected such evidence.

After the rendition of the verdict petitioner moved to set the same aside, again relying upon the Government control, and asserting that to allow said judgment to stand would deprive petitioner of property without due process of law. That contention was overruled, and judgment rendered on the verdict (R. 41-43).

VII

Questions Presented

We recognize the finality of the holding of the Supreme Court of Appeals of West Virginia, except as to Federal questions.

As shown, petitioner claimed immunity from suit on account of the Federal control and operation of the mine at, before and after the time of the accident causing the death of plaintiff's decedent, Ernest L. Stanton.

There are presented these questions, which we believe are Federal questions and within the jurisdiction of this Court:

(1) Was petitioner on August 27, 1943, the employer of Ernest L. Stanton, or was Stanton an employee of the United States?

(2) Was the negligence, if any, causing the injury attributable to petitioner?

(3) If petitioner should be compelled to respond in damages for an injury occurring while the mine was being operated by the Government, would that violate his rights under the Fifth Amendment to the Constitution of the United States by taking its property without due process of law?

VIII

Jurisdiction

It is believed that this Court has jurisdiction under its general jurisdiction to protect the Constitutional rights of citizens under Section 237 of the Judicial Code of the United States, and under such part of said section as gives it jurisdiction: "Where any title, right, privilege or immunity is specially set up or claimed under the Constitution."

IX

Reasons for Allowance of the Writ

First: The Supreme Court of Appeals of West Virginia has decided an important question of Federal Law not previously decided by this Court:

(a) This Court has never decided whether, while a coal mine was being operated under Federal control, the mine owner was liable to respond in damages for an injury, fatal or otherwise, suffered by a miner while employed in such mine.

(b) This Court has not decided whether during such control one employed in the mine is a servant of the mine owner or of the United States.

Second: The decision and judgment of the Supreme Court of Appeals of West Virginia in this case is contrary to the applicable decisions of this Court touching Federal

control of industries and the relation of the employees of such industries to the owners thereof.

Third: The affirmance by the Supreme Court of Appeals of West Virginia of the judgment of the trial court in the instant case, if not reviewed, will deprive petitioner of property without due course of law and in violation of the Fifth Amendment to the Constitution of the United States.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Appeals of West Virginia, commanding that said Court certify and send to this Court for its review and determination, on a day to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on the docket No. 9650, styled "Clara W. Stanton, Administratrix of the Estate of Ernest L. Stanton, deceased, Plaintiff Below, Defendant in Error, v. Ruthbell Coal Company, a corporation, Defendant Below, Plaintiff in Error," and that said judgment of said Supreme Court of Appeals of West Virginia may be reversed by this Honorable Court; and that petitioner may have such other and further relief as may seem meet and just.

RUTHBELL COAL COMPANY,
a Corporation,
Petitioner.

F. E. PARRACK,
Counsel for Petitioner.

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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Opinions Below

The opinion of the trial court (R. 21-23) justifies upholding liability of petitioner:

(a) Because the sole reason for Federal control of the mine was to prevent a strike.

(b) Because since the former decrees of the courts on questions of Federal control of industries there has been: "Greatly changed membership of the various United States courts," and because of a "marked change in social philosophy since that time."

The Supreme Court of Appeals of West Virginia in its opinion, affirming the judgment below, holds in regard to Federal control:

(a) That the regulations issued from time to time showed the control was merely nominal.

(b) That one of said regulations provided that the mining companies should remain, during Federal control, subject to state and federal laws, and "The mining companies are deemed to remain subject to suit as heretofore."

(c) That as there was no liability on the Government it would be unjust to relieve the company from liability" (R. 21-23).

Jurisdiction

Jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States; the jurisdiction of this Court to protect the rights arising under the Fifth Amendment to the Constitution, and under Section 237 of the Judicial Code.

In the state courts petitioner contended that the act of the United States, taking from it all its real and personal property, its franchises and funds, and placing its business entirely under the management of the Secretary of the Interior and such subordinates as he might designate, whether officers of the Company or not, and further under special supervision of a Regional Bituminous Coal Manager, gave petitioner immunity from liability for anything done or omitted while its mine was under such control. That contention was denied by the trial court and by the judgment and opinion of the Supreme Court of Appeals of West Virginia.

Specification of Errors of the Supreme Court of Appeals of West Virginia

The Court Erred

(1) In holding that at the time Ernest L. Stanton was injured Peter Titchenell was "defendant's mine foreman,"

and that "The control which he had over decedent would render defendant responsible for his negligence."

(2) In its finding that the Federal control was only nominal.

(3) In attempting to pass on the right of plaintiff below to recover from the Government, and holding that no such right existed, as that matter was not before said Court for adjudication.

(4) In determining the issue by a construction of the regulations made from time to time by the Secretary of the Interior, being administrative orders issued, not by petitioner's officers, but by the power that had supplanted them. The issue should have been determined by a construction of the Executive Order and the Order No. 1809 issued by the Secretary of the Interior and of the telegram by the said Secretary to C. W. Craig, petitioner's president, by which Orders and telegram petitioner's mine was taken into the possession of the Government (R. 140, 151 & 142).

(5) In affirming the judgment of the circuit court.

Facts and Authorities Relied On

(1) Under the authority of the Executive Order the Secretary of the Interior issued Order No. 1809, which included petitioner's mine by its reference to Appendix A, and sent the telegram aforesaid to petitioner's president specifically taking charge of said mine, and thereby completely excluding petitioner from possession and control of any of its property or money, took the management of the mine and the disposition of its products from petitioner, and vested it in the Secretary. The authority given the Secretary to use petitioner's officers if he chose would not prevent his having exclusive control.

Telegraph Company v. *Poston*, 256 U. S. 662.

Petitioner was advised that all employers were "serving the Government of the United States" (R. 152), and that the operating manager and all employees "are serving their country," and that the mines were "operating for the United States." The notice to employers required to be posted, and which was posted, stated that "all of the officers and employees of the company are serving the Government of the United States." These things showed Federal control exclusively. Petitioner was not the operator of the mine, and can not constitutionally be held liable for what occurred in its operation.

Telegraph Company v. *Poston, supra;*
Telephone & Telegraph Company v. *Spring,* 280 Fed. 382.

Statement

To avoid repetition, the Court is respectfully referred to the statement in the petition under the heading "Summary Statement of Matters Involved," from which the facts will appear in full detail.

Immunity of Petitioner

The power of the President to make the order of May 1, 1943, is not questioned in either the opinion of the trial court (R. 21-23), or in that of the Supreme Court of Appeals of West Virginia. The authority of the Secretary of the Interior to make the order taking over practically all the mines in the United States, including that of petitioner, is not questioned.

Ernest L. Stanton when injured was not a servant of petitioner.

Argument

This Court has not decided the exact question now presented, and it is of national importance.

The trial court said, "The basic question is the effect of this Order as to the ownership of the mine, and the results thereof." ("This Order" meant Executive Order No. 9340.) The word "Ownership" is not there germane. Otherwise, it was a succinct statement of the question in issue.

The "ownership" of the mine remained in petitioner. The possession, control, management and operation of the mine itself, and the disposition of its products and control of all funds used in its operations, were specially assumed by the Secretary of the Interior.

The Supreme Court of Appeals of West Virginia, in its opinion, assumes that the possession and control were lawfully taken. There can be no doubt that the War power of the President was ample to justify the seizure of the mines.

Telephone Co. v. *South Dakota,* 250 U. S. 163.

It is not denied that petitioner's mine was seized by the Government. To sustain its judgment in affirming the judgment of the trial court, the Supreme Court of Appeals of West Virginia holds:

First. That the "Regulations" show the purpose of Federal control to be "The maintenance of full production of coal for the effective prosecution of the War."

Second. The Secretary would use the existing organizations.

Third. That the possession and control were to be "temporary."

Fourth. That Federal control was only "nominal."

Fifth. That the ownership of the mine continued to be in the Company.

Sixth. That the Regulations declared that the manager and the employed should serve as employees of the Company.

Seventh. That the Company, by the Regulations, remained subject to Federal and State laws.

We assert the purpose of the Government in seizing the mines is unimportant, the fact of the seizure is ALL important. Whatever the purpose, the result was to oust the Company from the control and management; to take away its authority and substitute that of the Secretary. The Company's officers were to continue the management "if the cooperation of the coal company can be secured." Assuming such cooperation, it should continue the operation "Conforming with such directions as the Government may issue."

It was optional with the Secretary whether he should use the personnel of the management, a matter of policy that in no way restricted his exclusive control of petitioner's mine.

However temporary the possession, it is admitted that Stanton was injured while such possession continued. To say that the control was only nominal is to assume that the President of the United States and the Secretary of the Interior were enacting a farce, and did not mean what they said. Whatever may have been any regulations, can not change the fact that every regulatory order was issued, not by petitioner, but by the Secretary of the Interior, acting in that capacity or as Solid Fuels Administrator for War.

We assume that Order 1809 meant what was said in the statement "All officers and employees of the Company are serving the Government of the United States."

Nominal control is not consistent with the telegram by which, on May 1, 1943, petitioner's president was made

"Operating Manager for the United States," and was required to declare that he and all other employees were serving their country, and that the mine was "operated for the United States" (R. 143). Nominal control is refuted by the notice required to be posted as aforesaid, which was a notice to all employees and others, and stated that "All officers and employees of the company are serving the Government of the United States" (R. 150).

The recital in the Regulations that the Company remained subject to suit neither made the petitioner more nor less subject thereto than it would have been regardless of such statement. That was a matter of judicial determination. If it referred to suits for acts under Federal control, it was a declaration refuted by the decisions of the courts, if it meant they were liable to suits. If by that recital it was meant that the Company was liable to suit for anything occurring before Federal control, it was a mere recognition of a liability that the courts would sustain regardless of the declaration.

In the same Regulation it is stated: "No Operating Manager or Regional Manager is authorized to bring suit, accept service or enter into any legal proceeding on behalf of the United States without specific directions from the Administrator (R. 163). This would seem to evidence the recognition by the Secretary that the Company would not be liable to suit for acts done under Federal control.

The same Regulations recited, "The possessory interest of the United States in the property of the companies is deemed to be protected by the criminal laws of the United States protecting United States property." This statement is a recognition of the Government's exclusive possession and control of the property, and right to protect such possession and control by the criminal laws relating to property owned by the Government.

No reason has been advanced for holding petitioner liable for acts occurring under Federal control that was not advanced in the suits above cited against telephone and telegraph companies, and the orders and regulations as to the control and management of said companies were strikingly similar to those affecting Federal control of coal mines. In the joint Resolutions of Congress authorizing the seizure of telephone and telegraph it was provided that the lines remained subject to the state laws as to taxation, and to State police regulations, etc.

The Executive Order taking possession of the ~~mines~~ lines gave authority to the Postmaster General to operate them through existing owners, managers, directors and officers of the companies.

We believe that *Telegraph Company* v. *Poston, supra,* is decisive of every issue in the case, and requires a reversal of the judgment complained of, for the reasons stated in the petition and in this brief, and respectfully ask that the writ of certiorari be granted.

Respectfully submitted,

F. E. Parrack,
Counsel for Petitioner.